IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2215 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

SANJAUKUMAR ISHWARLAL MODI

Versus

STATE OF GUJARAT

---

Appearance:

1. Special Civil Application No. 2215 of 2004

MR SS SANJANWALA for MR RS SANJANWALA for Petitioner

RULE SERVED for Respondent No. 1-2

MR AY KOGJE, AGP for Respondent No. 3

---

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 29-01-2004, by

which he is detained under PASA as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about four criminal cases registered against the petitioner. After considering aforesaid cases as well as statements of two secret witnesses, the detaining authority has passed the order of detention, which is impugned in this matter.

2) At the time of hearing of this petition, Mr.S.S.Sanjanwala, learned advocate for the petitioner has vehemently submitted that there is total non-application of mind on the part of the detaining authority as the detaining authority as relied on extraneous material while passing the order of detention. It is submitted that cases at serial No.1 to 3 registered against the petitioner are the cases in connection with the offences under the Bombay Prohibition Act, so far as case at serial No.4 is concerned, the same is registered under Section 406 of I.P.C. It is submitted by him that the petitioner is detained as a "bootlegger" and not as a "dangerous person" therefore, the order of detention is confined only to his bootlegging activity and, reference to offence under Section 406 of I.P.C., is absolutely uncalled for. Mr.S.S.Sanjanwala further submitted that the order of detention is required to be quashed on the ground that case, which has no bearing with the bootlegging activity has been taken into consideration while passing detention order. It is further submitted that if said case, which is registered under Section 406 of I.P.C., is taken out, then only three cases remain for consideration of the detaining authority. Out of those three cases, the last offence registered under the Prohibition Act is of 3rd October, 2003, as against that the order of detention is passed on 29th January, 2004, therefore, there is a delay of about four months in passing the order of detention and in view of this delay order of detention is required to be quashed and set aside. It is also submitted that the statements of witnesses are recorded only with a view to cover up the delay in passing the order of detention. In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

> "21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned

> order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order after the occurrence of last so called incident. Therefore, the averment made in the petition is not controverted by the authority.

4) Apart from the said aspect, so far as offence under Section 406 of I.P.C. is concerned, the same is in connection with breach of trust and the same falls within Chapter XVII of the I.P.C. and it has no connection with the bootlegging activity of the petitioner. It is true that offence under Section 406 of I.P.C., can also be considered by the detaining authority while passing the order of detention but then the said person can be detained as a "dangerous person" and not as a "bootlegger". Under these circumstances, it is clear that the detaining authority has considered irrelevant complaint, while passing the order of detention.

5) Mr.Kogje, learned AGP, has submitted that so far as offence under Section 406 is concerned, in the complaint there is a reference about some rotten goods found from the petitioner. However, in my view, it is not in dispute that the complaint is filed only under

Section 406 of I.P.C., and no provision of Bombay Prohibition Act can be said to have been attracted in the said case. In that view of the matter, it is clear that irrelevant case has been considered by the authority while passing the order of detention. Though this point is taken by way of amendment, which was granted by this Court on 23rd February, 2004, the same is not controverted by filing any reply. If the complaint filed under Section 406 of I.P.C. is taken out from consideration, then there is a delay of about four months in passing the order of detention from the last registered offence. Therefore, in view of this delay and in view of the judgement referred to above, order of detention is required to be quashed and set aside.

6) In view of above discussion, order of detention is required to be quashed on both grounds, i.e., considering irrelevant document while passing the order of detention as well as on the ground of delay in passing the order of detention from the last registered offence.

7) For the foregoing reasons, this petition is allowed. The order of detention dated 29-01-2004 is quashed and set aside. The detenu, Manishkumar Shantilal Modi is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)

/malek